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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,894	06/23/2003	Kathryn Gardner Zesk		7567
7590	12/21/2005		EXAMINER	
Kathryn Zesk 2197 Beaver Dam Road Cassatt, SC 29032			KING, ANITA M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/601,894	ZESK, KATHRYN GARDNER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anita M. King	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 March 2005 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

This is the fourth office action for application number 10/601,894, Ground Anchoring Device for Floral Pots, Baskets, and Containers, filed on June 23, 2003.

***Drawings***

The drawings were received on March 21, 2005. These drawings are accepted.

***Cancellation of Claims***

Claim 4 has been canceled per applicant's request.

***Claim Objections***

Claim 2 is objected to because of the following informality: in line 2, "continuos" should be --continuous--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3, and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "The device" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a vertical shaft" in line 4 of the claim is intended to refer to the original recitation of the term "a vertical shaft" bridging lines 2 and 3 of the claim. The latter recitation should be either --the vertical shaft-- or --said vertical shaft--.

Claim 3 recites the limitations "The anchoring device" in line 1, "the vertical shaft" in line 2, and "the container" in line 3. There is insufficient antecedent basis for these limitations in the claim.

Claim 5 recites the limitations "This device" in line 1 and "the container" in line 3. There is insufficient antecedent basis for these limitations in the claim.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,399,498 to Messick. In regards to claim 1, Messick discloses an anchoring device (Fig. 1) for securing floral containers to the ground, the anchoring device is lightweight, easily manipulated, and can be used multiple times. The limitation of the anchoring device being inexpensive to manufacture is not given any patentable weight because it does not lend to the structural limitations of the anchoring device.

In regards to claim 2, Messick discloses a device made up of one piece of continuous rod steel of various lengths and diameters and has a vertical shaft (5) with a horizontal step (6) along the vertical shaft for insertion into the ground.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,273,841 to Cota. Cota discloses an anchoring device (Fig. 1) for securing floral containers to the ground; the anchoring device is lightweight and easily manipulated.

Claims 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,065,947 to Thompson. In regards to claim 3, Thompson discloses an anchoring device comprised of a radius/hook (19) at the top of a vertical shaft (10) to grasp the edge (22) of a container (20) being anchored.

In regards to claim 5, Thompson discloses a device that may be used as a single device or in multiples depending on the size/shape of the container being anchored.

#### ***Response to Amendment***

The applicant should note that this application contains a series of independent claims, thus, the limitations in claims 1, 2, 3, and 5 are independent (separate) from each other. For example, the limitations of claim 2 are not dependent on the limitations of claim 1 since both the claims are written in independent form. Applicant is suggested to note the format of the claims in the patent(s) cited.

***Response to Arguments***

Applicant's arguments filed March 21, 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claim 3 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments that Messick has a ring with multiple helical springs to engage baskets and is not direct attached to the primary material, the reference does indeed read on the claimed subject matter of claims 1 and 2, the extra limitations in the prior art reference can be present and still read on the subject matter of the applicant's claimed invention. Also, the springs in Messick are directly attached to the ring and aid in holding the container down in relation to the ground.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the device being directly attached to the primary material and the vertical shaft having a flat end) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the Messick reference does not teach a vertical shaft having a flat end, as noted above, this limitation is not an element of the claimed subject matter and further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the vertical shaft in Messick to have a flat end since it is well known in the anchor device art to have a

vertical shaft with a flat end for insertion into the ground as shown in the references to Edgerton and Niskanen et al.

In response to applicant's arguments that Messick's container sits into or upon a horizontal ring of the device and not flat on the ground, the container is not considered as a positively recited limitation of the claimed invention and thus is not given any weight when formulating the rejection on the merits. Also depending on the size of the container, Messick is capable of meeting this functional limitation.

Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. A rejection was made in regards to the Cota reference; however, applicant did not present any arguments in regards to this reference.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 783,099 to Bryant

U.S. Patent 1,548,169 to Pocklington

U.S. Patent 3,473,770 to Edgerton

The above patents disclose various types of anchoring devices.

This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an

appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee of \$250.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anita M. King  
Primary Examiner  
Art Unit 3632

December 14, 2005